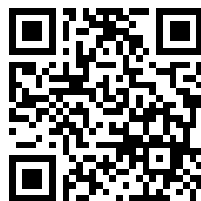

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DĀYADAÇAÇLOKĪ

TEN STANZAS IN SANSKRIT

Containing a Summary of the



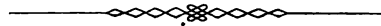
HINDU LAW OF INHERITANCE AND PARTITION

with an English Translation

BY

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NOTE.

THE object of this little book is purely practical, as the text is recent and of an elementary nature. My reasons for editing it are as follows :

In the course of above three years' duty as a Judge, I have noticed that much use is made by pleaders of so-called Manuals of Hindu Law written in English, which are meagre compilations, for the most part carelessly done, and full of erroneous notions¹⁾. In going over the Sanskrit MSS. at Tanjore I found this little tract which seems well suited to take their place provisionally, especially as it is intended (in accordance with the custom of the country) to be learned by rote.

It contains all the chief rules of Hindu Law as laid down in the received treatises, and, so far, cannot contribute false notions.

The author of the text is not named in the MS. No. 699 (Tanjore) which I have chiefly followed, but in MSS. Nos. 702 and 703 of the same library, which contain the text with a long Commentary, the name of the author of the last is said to be Durgayya son of Vāsudevārya, and he is, most probably, the author of the text. His name shows that he was a native of S. India, and there is no reason for supposing that the text is above a century old. Concise abstracts in verse²⁾, such as this, (as

1) These manuals are written by persons entirely ignorant of Sanskrit, and what teaching there is of Hindu Law in England appears to be carried on by tutors in the same position. But did any one ever imagine that, *e. g.*, Roman Law could be taught by a person ignorant of Latin to pupils in the same plight? The results are just what might have been expected. It is remarkable that these compilers avoid, as a rule, the translations of original treatises, and quote judgments of the Courts only. Had they done the opposite, their books might have some value. A real manual based on the original authorities and by a well known Jurist, will, I hope, shortly be published.

2) Though in verse, *not* poetry. The ancient Romans used similar versified compendiums of law. Cfr. Schöll, "Legis xii. Tabularum Reliquiae", p. 4.

opposed to the old diffuse Kārikā treatises) belong to the most recent Sanskrit literature. The text almost approaches the sūtra style.

I have not added the Commentary as it would make a large book, and thus defeat the object I have in view, and also because it does not appear to me to give information which cannot be found in books already translated, and which form the best commentary on this text. These are the Mitāxarā and the other books to be found in Mr. Whitley Stokes' "Hindu Lawbooks"; also the Mādhaviya treatise and Varadarāja's Vyavahāranirṇaya, of which I have translated the parts on inheritance. But it must be recollected that these are purely speculative treatises and not practical codes, as I have already proved¹⁾. They will show how the principles of Hindu Law have been deduced, by a rigid system of exegesis, from the old sūtras. The practical application of these principles can now be well studied in the Digest by the Hon. Mr. Justice West (of Bombay) and Dr. Bühler. Lastly, it should be determined how far the principles of the Hindu (Sanskrit) Law have prevailed over local usages, and to what castes they are applicable²⁾. This done, the student will clearly see what havoc English Law and false analogy have made with the system that the people of India have developed for themselves and which so well suits their circumstances³⁾.

There have been three periods in the study of Hindu Law by foreigners:⁴⁾ First, that of enquiry, from the middle of the seventeenth century to 1820. The earlier works by Baldæus, Halhed and others are forgotten, and Sir W. Jones is only remembered by his having drawn attention to the subject. Colebrooke and his followers are the only ones

1) See the Prefaces to the two books translated by me ("Dāyavibhāga" 1868 and "Vyavahāranirṇaya" 1872).

2) I was the first to call attention to this point. "Dāyavibhāga" pp. xiii-xv. (1868).

3) The natives of S. India, at all events, prefer their own laws. The application of the Succession Act to the Native Catholic Christians of S. India who are all converts from Hinduism or descendants of such, and who have hitherto followed Hindu Law, is, I am informed a cause of much complaint. The Khojas and Borahs (who are descendants of Hindus converted to Muhammadanism some centuries ago in Gujarat) still follow with pertinacity the Hindu Law.

4) I hope some time, when I have more leisure, to publish an attempt at a Bibliography of Hindu Law-Books, in which I shall explain this more fully, and show by whom the successive steps in error were taken.

who rendered real services to the science. The second period began when Colebrooke had left India, and lasted till recently. In it English lawyers, without any preparation for the task, attempted to systematize the materials they could find (whether good or bad, they did not seem to care); these they interpreted by European notions, and introduced incongruous foreign ideas wherever they could¹). All that did not square with the preconceived notions of these "elegant" jurists was denounced as imposture and corrupt forgery, and this period is marked by a vigorous but entirely unfounded denunciation of the Pandits. The third and last period has only commenced quite lately, and was promoted by the late Prof. Goldstücker²). It is marked by critical new editions of the old standard translations by Colebrooke and others, and by critical editions of texts and an enquiry into the sources and growth of Hindu Law. The progress of this new school is slow but sure, and, for the sake of the people of the country, it is to be earnestly desired that the false science of what I have termed the 'second period' may soon become a matter of history.

My object is (as I have already said) purely practical, but I must therefore point out once again that the small part of Hindu Law that has still a practical value, is not the only part that is of importance. For the understanding of Indian history and literature, the whole system is of immense use³), but for this application it is vain to look for help except from Germany, where there are signs of the beginning of a real study of Hindu Law⁴). The subject is difficult, but it will be fruitful in results.

Tanjore, 1875.

A. B.

1) The only book of this second period that can be still mentioned with respect is the chapter on Hindu Law in the "Erbrecht" of Gans, but it rests a good deal on Halhed and similar poor, second-hand sources. Stenzler's *Yājñavalkya* was the first critical edition.

2) See his Monograph "On the Deficiencies in the present Administration of Hindu Law", 1871.

3) For example, the Indian inscriptions which are our best source of Indian history, are drawn up in the terms prescribed by the Law-Books; see my "Elements of S. Indian Palæography" (4°. 1874) pp. 63-77.

4) e. g. Mayr's "Das Indische Erbrecht", Vienna 1873. The whole subject has also been taken up by another well known scholar, Dr. Jolly of Würzburg.

TEXT.¹⁾

*Metre:—*Çārdūlavikrīḍita (19×4=76)

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- (1.) Svečchātaḥ svayamārjite tu vibhajed arthe svabhāryāsutān
ātmanām cha; samam kramāgatadhane; putrečchayā 'py asprihaḥ. |
yady ekas tanayaḥ, pitā dviguṇabhāg; bhāryā niramṇā tadā.
prete 'sminn itare samā. vipitṛikāḥ pautṛāḥ pitṛidvārataḥ. ||
- (2.) Kanyāḥ saṃskṛitīm āpnuyuḥ pitṛidhanād. ā saṃskṛiter jīvanam.
saṃskāryāḥ syur asaṃskṛitāḥ cha sahaajāḥ prāksaṃskṛitair bhrātṛibhiḥ. |
tulyo 'mṇam tu vibhaktajo 'rhati dhanāt pitṛyād; atulyo bhrītim
sarvebhyaḥ. tadabhāvataḥ cīram api prāpto vibhaktāmṇataḥ. ||
- (3.) Nānāvarṇavadhūsutās tv iha cātustṛidvye kabhāgāḥ kramād.
viprasyai 'va bhavet pratigraha mahī, dattā 'pi pitṛā 'param. |
cūdrājo dvijato bhuvam na labhate. cūdrasya dāsīsutaḥ
kāmaṇam pitṛikārthabhāg. asati satputrādike sarvabhāk. ||
- (4.) Putrākhyā guṇataḥ kramād dhanaharāḥ. saty aurose putrikā
tulyā syād; apare 'mṇajīvanajusho. dattaḥ caturthāmṇabhāk. |
svārthā strī, duhitā, pitā, 'tha janani, bhrātā, taduttham kulam,
bandhuḥ, sadgurur ity aputramaraṇe. cishyaḥ; sahādhyaḥ api. ||
- (5.) Vānaprasthamumuxunaishṭikadhanam tv ācārya cishyācrama-
bhrātṛiṇām kramato. yathoktavirahe tulyācramāṇām bhavet. |
sarvatro 'ktajaneshv asatsu nṛipater, viprasvam utkarshato.
viprāṇām tadabhāvato bhavati, tačchesheshu dharmeshu tat. ||

1) In a recent composition such as this is, which is backed by a long and diffuse commentary, there are no various readings properly.

- (6.) Samsṛiṣṭau viśhamārjane 'pi sama evai 'shām vibhāgaḥ punas;
tatrā 'putramṛitau ta eva dhaninas; teshv apy ananyodarāḥ. |
samsṛiṣṭād api sodaro 'nya; iha tadraxye tu bhāryāsute.
samsṛiṣṭeshu vibhaktajo yadi bhavet teshv eva bhāgam haret. ||
- (7.) Patyau jīvati yad dhṛitam yuvatibhis tāsām tu tad bhūṣaṇam;
pūrvasyāḥ samam ādhivedanikam apy aprāptaṇeśham bhavet |
mātuḥ strīdhanam ātmajo 'rhati sūtā 'nūḍhā ḥa; dauhitry ataḥ.
kimḥ tad yadi yautakam duhitaras; tās v apy anūḍhā sthirā. ||
- (8.) Brāhmādyeshv asutārtham arhati patis, tasyā 'nujo, bhrātṛijaḥ
svasṛiṇyāḥ. svakam āsurādyupayameshv asyāḥ pitā 'mbā tataḥ. |
svasṛiṇyāḥ saha jātmajo duhitṛibhṛit pitror abhāve kramāḥ.
ḥulkam mātṛisahodarau; sahajamātrādyās tu kanyā dhanam ||
- (9.) Yaḥ sādharmaṇam uddhared dhṛitam anujñātas tu tasyai 'va tal;
labdham pitryadhanopaghātarahitam; pitṛādidattam tathā |
pitṛarthānupajīvanena parataḥ samprāptavidyārjitam
nā 'lpajño 'rhati tat, kuṭumbabharaṇādyarthān nivarteta ḥet ||
- (10.) Klibādyā nijadharmakarmarahitās, tadyoshitaḥ, kanyakā
bhartavyās tu niraṃṣakā; haratu satputro 'ṃṣam andhādijaḥ. |
no raxyā na ḥa bhāgino 'tra patitāḥ, sannyāsino naiśṭhikā;
bhartavyo 'tra kuṭīḥako. duhitaraḥ putrāḥ striyāḥ pūrvavat ||



TRANSLATION.

Partition.

1. *A father¹⁾ can separate his sons, his wife, and himself²⁾, at his own will, in case of self-acquired property; he can do so, all sharing equally, in case of inherited wealth; if he be without sensual desire, such partition is at his son's will.*

If he have only one son, the father takes two shares, and the wife then does not get a share. When he, the father, is dead³⁾, the others are equal as regards shares. Grandsons who have lost their fathers take shares through their fathers⁴⁾.

2. Daughters must have their marriage rites performed for them out of their father's property. Till marriage they must get maintenance out of it. Brothers not already initiated by investiture with the sacred string must be initiated by their brothers previously initiated. A son of equal caste with the father, and who is born after such partition, gets his share out of the paternal property (*i. e. share*); if not of equal caste, he gets maintenance from all his half brothers. As he has not it (*i. e. his share*), one who has returned after a long time of absence, gets his share out of the shares of those brothers of his who have been already separated

3. Sons by wives of the four several castes get on this occasion of partition, four, three, two and one share respectively according to the order of their mother's caste⁵⁾. Let land got by acceptance as a gift belong to the

1) Words in italics are not in the original. In this text where there can be several of a class of heirs the singular includes the plural also.

2) There is no partition between a husband and wife.

3) It must be noticed that Hindu Law recommends and encourages partition. The right to it ceases with the 4th in descent, so undivided great great grandsons would lose their rights completely.

4) *i. e. per stirpes.*

5) It is needless to remark that this is now obsolete, but (in accordance with Indian notions) is necessarily mentioned to make the treatment of the subject appear complete.

Brahman son, even though it has been given by the father to another (*i. e. a son of another caste*). A son born to a Brahman by a Çūdra woman does not get land. A son of a Çūdra man by a dāsī¹⁾ gets a share of the paternal property at the will of the other heirs. If, however, there be no legitimate son or the like, he gets all *his father's property*.

4. Those persons called sons, of various kinds²⁾, take shares according to their rank, if there be an aurasa or legitimate son; the putrikā (*appointed daughter*) is equal to him; the rest get shares or maintenance. A datta (*adopted*) son gets a fourth, if a legitimate son be born after his adoption³⁾.

Succession to
a divided person's
property. On the death of a separated man who does not leave children, grand children or great grand children, his wife (*i. e. widow*) succeeds; in her default, the daughter; and in her default, her son. In their default, the father; and in his default, the mother⁴⁾. In her default, the brother (or brothers); and in his default, his descendants, or son and grandson. In their default, a gotraja or a bandhu; and in default of such, a worthy teacher. A pupil succeeds in default of a teacher; also a fellow-student in default of a pupil.

5. The property of a vānāprastha, a recluse or a perpetual student is inherited by a brother in religion, a pupil or teacher respectively. In the default of those mentioned, let it belong to those of the same religious order.

In every case, in default of those people who have been mentioned as heirs, it belongs to the sovereign, except Brahman's property. On their (the heirs') default let it go to Brahmans, it is for his, the deceased's, funeral rites⁵⁾.

6. If reunion has taken place, the partition anew
Reunion. of those who were parties to it is equal, even where they had unequal property previous to it. In such a case of reunion, in case of

1) Lit. 'a slave girl.' Now the term can only be applied to a kept mistress.

2) See Mitākṣarā, chap. i., section viii. This is all obsolete, but it keeps its place for the same reason as the rules about the offspring of mixed marriages.

3) Mit. chapter i., section xi. The first part of this is also obsolete, such conflicting claims rarely occur.

4) The Commentators on the law-books differ as to whether the mother or father should come first. See Colebrooke's note on Mit. ii., 3. § 5.

5) The Hindu lawyers never contemplated a foreign and non-Hindu Government which would neglect to have these rites performed!

the death of one who has no son, they *who were reunited with him* take his property; also among them, *first* those who are uterine relatives.

In this *last* case the wife and daughter of the deceased must, however, be maintained by them. Among reunited persons if one be born after partition, he must assuredly get a share from them.

7. What ornament has been worn by the youthful wives during the life of the husband, that is their property. Let a former wife get, on a second marriage by her husband, equal compensation if she has not got other property (*i. e. she is to get the equivalent of the marriage-expenses*).

A son takes the strīdhana of his mother, also preferably Strīdhana. an unmarried daughter; in default of such, the daughter's daughter next succeeds. Daughters get anything that is yautaka; among them moreover, the unmarried daughter is preferred.

8. In cases where the marriage has been of the Brahma form and the like, the husband takes his childless wife's property; in his default, his younger brother; and in his default, the brother's son; in his default, the sister's son.

Where the marriage was of the Āsura form and the like, her father and then her mother inherit the property; in their default, the sister's son, brother, ^{son} and daughter's husband successively, in absence of the two parents. The mother and, in her default, the brothers, succeed to the ḡulka. The brothers and, in their default, the mother and the like succeed to an unmarried maiden's property.

Indivisible property. 9. He who permitted to do so by brothers and the like, recovers common property taken away wrongfully by others, that recovered property is even his; property acquired without prejudice to the paternal wealth belongs to the acquirer; so also property given by the father and the like¹⁾ belongs to him only to whom it was given. As for what property is got by means of learning acquired from a stranger, and without maintenance from the father's wealth, a brother with little learning does not deserve a share of that, if he cease to maintain the family of the student and the like²⁾.

1) C. "and the like" (*i. e.*) mother and grand-parents.

2) On indivisible property, see Mit. i., section iv.

Disqualified persons, etc. 10. Impotent men and the like who are deprived of their own duty and rites, they, their wives *and* maiden daughters are to be supported, but do not get shares. Let, however, a competent son born of a blind and similarly *disqualified sharer* get a share. Degraded *members of the family* are also¹⁾ not to be supported nor are *they* sharers here among the others; so also sannyāsis and those who have renounced the world. But a Kuṭīchaka²⁾ is to be supported here *among the rest*. Their daughters, sons *and* wives follow the rule as before³⁾ (*i. e.* they inherit if their claims arose before the degradation etc. of the person through whom they claim).



1) *ca*=and. The C. says this is to include their descendants.

2) C. The lowest of the four kinds of hermits, viz. Kuṭīchaka, Bahūdaka, Hamsa and Paramahamsa. He is simply a person who renounces all worldly cares

3) It is necessary to point out that these provisions have been much misunderstood by the Courts. The real ground of exclusion is inability to perform the rites which are incumbent on heirs and which really determine the succession. This inability (or incapacity) may be physical or moral.



